



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

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DECISION OF THE BOARD

Mailed and Filed: MAY 15, 2023

IN THE MATTER OF:

Appeal Board No. 628734

PRESENT: JUNE F. O'NEILL, MEMBER

The Department of Labor issued the initial determination holding the claimant eligible to receive benefits. The employer requested a hearing and objected contending that the claimant should be disqualified from receiving benefits because the claimant lost employment through misconduct in connection with that employment and that wages paid to the claimant by such employer should not count in determining whether the claimant files a valid original claim in the future. The Commissioner of Labor objected that the hearing request was not made within the time allowed by statute.

The Administrative Law Judge held a telephone conference hearing at which all parties were accorded a full opportunity to be heard and at which testimony was taken. There was an appearance on behalf of the employer. The claimant failed to appear, either personally or through a representative. By decision filed March 16, 2023 (), the Administrative Law Judge overruled the Commissioner of Labor's timeliness objection, overruled the employer's objection and sustained the initial determination.

The employer appealed the Judge's decision to the Appeal Board, insofar as it overruled the employer's objection and sustained the initial determination.

Based on the record and testimony in this case, the Board makes the following

FINDINGS OF FACT: The claimant worked for a hospitality company as a shuttle driver from 2021 until July 15, 2022. For insurance purposes, the employer's policy, of which the claimant was aware, prohibits employees from driving outside a five-mile radius of the employer's business without prior approval.

In May 2022, the claimant was warned by the employer that she could be discharged if she continued traveling outside the five-mile radius without prior approval. On July 15, the claimant drove the employer's shuttle six miles from the employer's place of business to take a coworker home without obtaining prior approval. On July 22, 2022, the employer discharged the claimant because she took a team member home outside the five-mile radius on July 15 without authorization.

OPINION: The evidence establishes that the claimant lost her employment because she took a coworker home outside the five-mile radius of the employer's business without authorization on July 15, 2022. As the claimant did not appear at the hearing, the record fails to establish that the claimant had a compelling reason for violating the employer's policy. As she was aware of the employer's policy and was warned, she knew or should have known her actions would jeopardize her job. Accordingly, we conclude that the claimant's actions on July 15 constitute misconduct for unemployment insurance purposes.

DECISION: The decision of the Administrative Law Judge, insofar as appealed from, is reversed.

The employer's objection, that the claimant should be disqualified from receiving benefits because the claimant lost employment through misconduct in connection with that employment and that wages paid to the claimant by such employer should not count in determining whether the claimant files a valid original claim in the future, is sustained, effective July 16, 2022.

The initial determination, holding the claimant eligible to receive benefits, is overruled.

The claimant is denied benefits with respect to the issues decided herein.

JUNE F. O'NEILL, MEMBER